

REQUEST	Current Zoning: B-2, general business Proposed Zoning: MUDD-O, mixed use development district, optional
LOCATION	Approximately 3.23 acres located on the west side of the intersection at West Sugar Creek Road, North Graham Street, and Mineral Springs Road.
SUMMARY OF PETITION	The petition proposes to allow all uses permitted in MUDD, including the operation of a community theatre and lounge, in an existing shopping center. The MUDD zoning district is requested because it has a 100-foot separation requirement between lounges, nightclubs and similar uses, and any residential use or residential district (a lower separation than the 400-foot distance requirement for most zoning districts).
PROPERTY OWNER	Louis G. Ratcliffe, Inc.
PETITIONER	Louis G. Ratcliffe, Inc.
AGENT/REPRESENTATIVE	R. Susanne Todd, Johnston, Allison & Hord
COMMUNITY MEETING	Meeting is required and has been held. Report available online.
STATEMENT OF CONSISTENCY	This petition is found to be consistent with the North East District Plan but not reasonable and in the public interest by a 5-2 vote of the Zoning committee (motion by Commissioner Allen seconded by Commissioner Griffith)

ZONING COMMITTEE ACTION	<p>The Zoning Committee voted 5-2 to recommend DENIAL of this petition. The following modifications were made to the petition:</p> <ol style="list-style-type: none"> 1. Removed the request for the approximate 9,200 square-foot building expansion shown on previous site plans. 2. Modified the language under the "Optional Provisions" by removing all references to the proposed building expansion shown on the previous site plan, and by removing language relating to future improvements to the existing building facade. 3. Removed optional request to allow parking between the street and any future building expansion. 4. Added a note restricting the height of any development/redevelopment to 60 feet. 5. Added Note 1F that states unless specifically excepted by site plan's Development Standards, any future redevelopment of the site must comply with MUDD requirements. 6. Added a note identifying the days and hours of operation of the proposed community theatre/lounge with language as follows: "The anticipated operating days and hours for the community theatre and lounge will be Monday-Thursday from noon until midnight, and Friday-Sunday from noon-2:30 am, with the intention to have morning hours on an as needed basis. The hours of operation will at all times comply with applicable governmental rules and regulations." 7. Added language to Note 5 stating that the petitioner will inform NCDOT of the required six-foot sidewalk and eight-foot planting strip and that the requested rezoning will not be conditioned on installation of those required improvements. CDOT staff has confirmed there is a pending NCDOT roadway improvement project for N. Graham Street and W. Sugar Creek Road. 8. Amended the "Site Summary" table to identify number of required and proposed parking spaces. 9. Clarified square footage by amending "Site Summary" table and removing the proposed expansion square footage, and modifying Note 3 by removing reference to the proposed expansion.
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10. Address the CDOT comment by inserting language that acknowledges CDOT/NCDOT approval with respect to future parking and/or circulation on the B-2 parcel to the south.
11. Addressed the Storm Water Services comment by adding Note 1e that acknowledges intent to comply with the Post Construction Controls Ordinance.
12. Added language to "General Provision" Note 1a. stating a community lounge is "defined as a nightclub by the City of Charlotte Zoning ordinance."
13. Added language to "General Provision" Note 1c. stating the existing curb cut from N. Graham Street to the Site may remain as shown on the Rezoning Plan, or may be closed due to the NCDOT road widening project.
14. Modified "General Provision" Note 1g. by changing closing time Friday-Sunday from 2:30 a.m. to 2:00 a.m.
15. Combined "Optional Provisions" Notes 4b. and 4c. (deleting old Note 4c.), providing language that requests existing parking, loading, access and circulation to remain in current location, subject to specific terms in the Development Standards.
16. Modified "Optional Provisions" Note 4c., deleting request for a pole mounted sign (maximum height of 15', maximum face area of 60'), and adding a new request to allow a new monument sign having a maximum height of eight feet (8') and a maximum face area of sixty feet (60').
17. Deleted old "General Provisions" Note 7 ("Screening") and moving that language to a new "Optional Provision" Note 4e. pertaining to required screening. Added language stating intent to maintain existing wooded berm along northern boundary and existing fence along western property line. Petitioner notes the installation of street trees along N. Graham Street and W. Sugar Creek Road. In lieu of providing additional screening along parking lot, petitioner will improve the façade of the building with a free standing decorative planter and provide additional shrubs and ground cover within the islands of the parking lot.
18. Deleted old "General Provisions" Note 5 ("Streetscape") and moved that language to a new "Optional Provision" Note 4f., pertaining to streetscape. Petitioner notes NCDOT's proposed five-foot sidewalk and planting buffer per the N. Graham Street/W. Sugar Creek Road street improvement project. Petitioner commits to informing NCDOT about MUDD standards requiring a six-foot sidewalk and eight-foot planting strip, and requests that NCDOT widen the sidewalk and allow adequate room to accommodate an eight-foot planting strip. Petitioner requests not to be required to provide these improvements, or that this rezoning be conditioned upon installation of the six-foot sidewalk or eight-foot planting strip.

The following site plan issue remains outstanding:

- 1. A minimum eight-foot planting strip and six-foot sidewalk are required along N. Graham Street and W. Sugar Creek Road. Obtain a letter from NCDOT confirming improvements NCDOT is responsible for completing along W. Graham Street and W. Sugar Creek Road with respect to streetscape improvements and installation of sidewalks and planting strips. NCDOT should also confirm that the notes and details as shown on the site plan are correct. NCDOT streetscape improvements must meet MUDD standards.**

VOTE

Motion/Second:	Allen/Griffith
Yeas:	Allen, Johnson, Lipton, Phipps and Zoutewelle
Nays:	Fallon and Griffith
Absent:	None
Recused:	None

**ZONING COMMITTEE
DISCUSSION**

Staff presented the item to the Committee, noting the Zoning Committee voted to defer this request at its July 27, 2011 meeting to allow the petitioner additional time to work with staff to resolve outstanding issues. Staff identified outstanding issues addressed prior to the July 27, 2011 Zoning Committee meeting (noted in green), and changes made to the site plan via a revised site plan dated August 31, 2011 (noted in blue).

Staff reviewed the outstanding site plan issue pertaining to the installation of a six-foot sidewalk and eight-foot planting strip along the rights-of-way as per the MUDD district requirements. The petitioner objected to this request, believing enough concessions had already been made with respect to removing the expansion area and modifying the optional requests. Staff also noted that the petitioner was concerned that taking measures to accommodate these improvements could potentially result in loss of parking spaces.

A Commissioner asked for clarification with regard to development rights involved in the event of rezoning the property to MUDD, including change of use. Staff responded by stating that what is seen on the site plan is what would be allowed – the operation of the community theatre and lounge in the existing building as is. Staff noted the removal of the expansion area, and the requirement to comply with the MUDD requirements in the event that the site redevelops. Staff also stated that the site could be rezoned again to accommodate another proposed development. The Commission inquired about the impact of the nightclubs, bars, and lounges text amendment, and staff responded that effort had just recently started and that it would not affect this rezoning petition.

A Commissioner asked for clarification regarding the intent of this rezoning and inquired the distance between the rezoning site and nearest residential property, and staff responded by stating that the MUDD zoning requires a 100-foot separation for nightclubs, bars, and lounges, a lesser distance than current 400-foot separation under the current B-2.

The rules were suspended to allow the petitioner to identify the approximate distance between the rezoning site and residential and institutional uses. A Commissioner questioned how to vote on a request that went against policies. Another Commissioner responded that while she understands the conflict, she was in attendance at the community meeting and that many persons present spoke in favor of the request. She stressed that the site had been renovated and that it was felt this project would be an enhancement to the area. Another Commissioner stated that her recollection of this proposal was different and that there were mixed feelings, with some expressing concern about the proposed use. It was noted that the petitioner had been previously denied variances from the Zoning Board of Adjustment with respect to the distance requirements.

A Commissioner asked if the outstanding item could be resolved between staff and the petitioner. Staff responded by stating the purpose of the deferral was to allow time to resolve outstanding items, and that only the one outstanding item remained. Some Commissioners asked for a further explanation as to how staff became comfortable with this request. Staff responded by stating that there is no issue with the use, but allowing the MUDD district at this location.

	A Commissioner expressed concern that staff has had a stronger stance against certain uses, and that this proposal is akin to spot zoning. Another Commissioner stated that while this may not be the best use, it was partially surrounded by industrial uses.
MINORITY OPINION	The minority of the Zoning Committee felt that the zoning and use of the property would be an improvement to the area. They noted that the community and staff supports the use.
STAFF OPINION	Staff agrees with the minority of the Zoning Committee.

FINAL STAFF ANALYSIS
(Pre-Hearing Analysis online at www.rezoning.org)

PLANNING STAFF REVIEW

• **Background**

- At its meeting on January 25, 2011, the Board of Adjustment denied two variances from the required 400 foot separation of a nightclub, bar or lounge to a residential use or residential district in order to allow the operation of a community theatre and lounge on the subject rezoning site.

• **Proposed Request Details**

- The site plan accompanying this petition contains the following provisions:
 - Permitted uses, including any accessory uses, as allowed in MUDD.
 - Establish a community theatre and lounge in an existing 23,661 square-foot shopping (proposed use will occupy approximately 4,000 square feet).
 - New five-foot sidewalks connecting building to existing and proposed sidewalks along West Sugar Creek Road and North Graham Street.
 - Existing driveway locations may remain or be shifted subject to NCDOT/CDOT approval.
 - Streetscape improvements in conjunction with the North Graham Street and West Sugar Creek Road widening project, including:
 - Installation of street trees in area behind future right-of-way.
 - Provision of a five-foot (5') sidewalk and planting strip of variable width (by NCDOT).
 - Petitioner to work with NCDOT to widen the proposed sidewalk and allow for an eight-foot (8') planting strip (but otherwise petitioner will not be required to provide a six-foot (6') sidewalk and eight-foot (8') planting strip.
 - Reserve the right to allow cross-access with the abutting B-2 zoned parcel to the south.
 - Additional shrubs and groundcover in parking lot tree islands.
 - Optional provisions include:
 - Allow the existing building and façade improvements to remain in their current condition.
 - Allow the existing parking, loading, access, and circulation between the building and North Graham Street and W. Sugar Creek Road to remain in their current condition and locations.
 - Allow the installation of a new monument sign having a maximum height of 15' and a maximum face area of 60'.
 - Allow the existing sidewalks along North Graham Street and West Sugar Creek Road to remain in their current condition and location until improvements by NCDOT are completed. Petitioner shall not be required to demolish any new sidewalks installed as part of NCDOT's road widening project.
 - Maintain the wooded berm located along the northern boundary and the fencing along the western boundary. Petitioner has planted non-required street trees between the future right-of-way required for the NCDOT road widening project and N. Graham Street and W. Sugar Creek Road. Following construction of the road widening project, petitioner will continue to maintain any remaining street trees. In lieu of additional screening across the front of parking lot, petitioner will improve the façade of the building with free standing decorative planter and provide additional shrubs and ground cover within the island areas of the parking lot.
 - Petitioner to inform NCDOT of MUDD standards regarding required six-foot sidewalk and eight-foot planting strip and request that NCDOT widen the proposed sidewalk and move it back to allow for an eight-foot planting strip. Petitioner will not be required to provide, and this rezoning will not be conditioned on, installation of a six-foot sidewalk and eight-foot planting strip.

- **Public Plans and Policies**

- The *Northeast District Plan* (1996) recommends retail uses at this location.
- While this petition is consistent with the *Northeast District*, the design of the existing shopping center, as well as the requested optional provisions to the development and design standards contained in the MUDD district, are not consistent with the urban, pedestrian-oriented intent of the MUDD zoning district.

- **Staff Recommendation (Updated)**

- Staff agrees with the minority of the Zoning Committee.
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DEPARTMENT COMMENTS (see full department reports online)

- **Charlotte Area Transit System:** No issues.
 - **Charlotte Department of Neighborhood & Business Services:** No issues.
 - **Charlotte Department of Transportation:** No issues.
 - **Charlotte Fire Department:** No issues.
 - **Charlotte-Mecklenburg Schools:** Not applicable.
 - **Charlotte-Mecklenburg Storm Water Services:** No issues.
 - **Mecklenburg County Land Use and Environmental Services Agency:** No comments received.
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ENVIRONMENTALLY SENSITIVE SITE DESIGN (see full department reports online)

- **Site Design:** The following explains how the petition addresses the environmentally sensitive site design guidance in the *General Development Policies-Environment*.
 - This site meets minimum ordinance standards.
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OUTSTANDING ISSUES

- The petitioner should:
 1. Provide for a minimum eight-foot planting strip and six-foot sidewalk are required along N. Graham Street and W. Sugar Creek Road. Obtain a letter from NCDOT confirming improvements NCDOT is responsible for completing along W. Graham Street and W. Sugar Creek Road with respect to streetscape improvements and installation of sidewalks and planting strips. NCDOT should also confirm that the notes and details as shown on the site plan are correct. NCDOT streetscape improvements must meet MUDD standards.
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Attachments Online at www.rezoning.org

- Application
- Pre-Hearing Staff Analysis
- Site Plan
- Community Meeting Report
- Charlotte Area Transit System Review
- Charlotte Department of Neighborhood & Business Services Review
- Charlotte Department of Transportation Review
- Charlotte Fire Department Review
- Charlotte-Mecklenburg Schools Review
- Charlotte-Mecklenburg Storm Water Services Review

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